

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Waste Management

(Amendment)

401 KAR 42:330. Small Owners Tank Removal Account.

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Subpart~~[Part]~~ H

STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

Section 1. Eligibility. (1) To demonstrate eligibility, an owner shall submit a completed Underground Storage Tank[SOTRA] Application for Assistance for SOTRA, DWM 4293~~[, DEP 6067]~~. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner meets the financial eligibility criteria of \$100,000 total income, or less, averaged over the last five (5) years as documented by:

1. The applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies and all other

Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns:

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) The tanks are located ~~at~~on a facility that is or was involved in the storage~~retail sale or wholesale distribution~~ of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the owner~~applicant~~ seeking reimbursement from SOTRA~~the Small Owners Tank Removal Account (SOTRA);~~ pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. Permanently closed tanks will not be replaced or upgraded~~The retail sale or wholesale distribution of motor fuel at the facility from a UST system or systems permanently cease upon permanent closure of the tanks~~; and

2. All known tanks at the facility are being permanently closed~~removed or closed in place~~; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly discovered underground storage tank (UST) system shall not affect the eligibility of an owner~~otherwise eligible in accordance with subsection (1) of this section~~.

(3) A tank shall not need to be in use~~operation~~ prior to its permanent closure~~removal~~.

(4) Owners shall submit to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, incorporated by reference in 401 KAR 42:060~~[A written notice shall be submitted to the applicable regional office at least fourteen (14) calendar days prior to commencement of the permanent closure of the petroleum storage tank to maintain eligibility for reimbursement].~~

(5) Federal~~[and state-owned]~~ facilities shall not be eligible for reimbursement from SOTRA in accordance with KRS 224.60-115(16)~~[the Small Owners Tank Removal Account].~~

Section 2. Account Use. (1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of permanent closure in accordance with~~[of actions required in]~~ 401 KAR 42:060~~[42:070]~~.

(2) The use of this account shall be limited as specified in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall be eligible for reimbursement of the cost of permanent closure, but shall not be eligible for payment of corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be made in accordance with~~[governed by]~~ 401 KAR 42:250.

(4)(a) If expenditures from this account exceed \$3,000,000 during a~~[any]~~ fiscal year, the cabinet shall suspend further reimbursements for that fiscal year~~[from this account]~~. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) This determination shall be based upon legislatively enacted budgets and associated appropriations.

(5) The owner shall have one (1) year from the application approval date to perform permanent closure in accordance with 401 KAR 42:060.

Section 3. Application Procedure. (1) The owner shall file a completed UST[SOTRA] Application for Assistance for SOTRA, DWM 4293,[DEP 6067] for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank. The owner shall also provide the following information:

(a) Verification of income through the submittal of the following:

1. Copies of the applicant's signed federal income tax returns for the last five (5) years.[, with the exception of] Non-Profit Public Service Corporations, eligible governmental bodies and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns;

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, driveways, piping, dispenser islands, paved areas, and the proposed extent of areas to be excavated[evacuated] in the performance of permanent closure, including dimensions;

(d) Color photographs of the facility and the areas to be impacted by the permanent closure;

and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name,~~[in accordance with 401 KAR 42:020,]~~ with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

~~(2)[The owner shall retain a copy of the SOTRA Application for their records.~~

~~(3)]~~(a) In response to the application submitted, the UST Branch~~[cabinet]~~ shall issue a letter setting forth the owner's eligibility status and establishing a reimbursable amount in accordance with Section 4~~[the availability of funding for the closure of the petroleum storage tank].~~

(b) Permanent closure of the tank system shall not begin until the UST Branch~~[cabinet]~~ has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

Section 4. Permanent Closure Costs. (1) Costs for the permanent closure and facility restoration shall be established in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250. The reimbursable amount, issued in a written approval by the UST Branch, shall be based on~~[The rates established for permanent closure costs in this section shall apply to a SOTRA Application for Assistance approved after October 6, 2011. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars and sixty (60) cents per gallon of tank capacity or the following matrix table]:~~

(a) The formulated task rates established in Section 2.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, a cost estimate submitted by the owner. The cost estimate shall:

1        1. Include a cost itemization to complete the individual task using those personnel and  
2 equipment rates established in Section 5.0 of the UST PSTeAF Reimbursement Rates,  
3 incorporated by reference in 401 KAR 42:250, applicable to individual components of the task;

4        2. Include three (3) competitive bids from suppliers or manufacturers of corrective action  
5 equipment for individual equipment purchase or rental, exceeding \$3,000, containing a description  
6 of the equipment to be purchased or rented provided by the supplier or manufacturer for new  
7 equipment purchased; and

8        3. Include an estimate for materials to be purchased.

9        (2) The reimbursable amount for Facility Restoration which has not been directed by the  
10 UST Branch shall be established by the submittal of an obligation request to the cabinet, with the  
11 information outlined in Section 5.9.2 of the UST Corrective Action Manual, for the completion of  
12 facility restoration actions.

13        (a) When an obligation request is approved, a written approval of an obligation and  
14 guarantee of payment, shall be issued in writing by the UST Branch in accordance with KRS  
15 224.60-140(5).

16        (b) Reimbursement for facility restoration activities shall be made in accordance with  
17 Section 5.

18        (3) The UST Branch shall establish the reimbursable amount in accordance with subsection  
19 (1) of this section. The cabinet shall attach to the written approval:

20        (a) An itemization of the reimbursable amount; and

21        (b) The UST Claim Request for Directed Actions, DWM 4286, incorporated by reference  
22 in 401 KAR 42:250.

(4) The issuance of a written approval by the UST Branch shall, subject to the provisions of Section 5, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written approval, in accordance with KRS 224.60-140(5).

(5) The reimbursable amount established by the UST Branch shall be adjusted to deduct those actions which were approved but could not be completed.

(6) Optional soil removal outside of the excavation zone in accordance with Section 4.15 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities, without additional corrective action activities being performed; or

(b) In accordance with 401 KAR 42:050, if additional corrective action is necessary.

(7) Facility restoration activities, shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities in accordance with KAR 42:060, without additional corrective action activities being performed; and

(b) In accordance with 401 KAR 42:250, if additional corrective action is necessary.

Number of Tanks in Pit	Size of Largest Tank in Pit (gallons)			
	Less than 3,100	3,101 to 5,101	5,101 to 10,000	Greater than 10,000
1	\$3,900	\$4,420	\$6,370	\$7,020
2	\$6,370	\$7,150	\$9,620	\$11,180
3	\$8,320	\$9,750	\$12,610	\$15,340
4	\$10,270	\$11,700	\$15,340	\$18,200

5	\$12,220	\$13,650	\$17,940	\$21,970
Each Extra	\$1,950	\$1,950	\$2,340	\$2,860

~~(b) In addition to the cost listed in subsection (1)(a) of this section, the cabinet shall reimburse a one (1) time amount of \$2,095, for the preparation and submission of a Closure Assessment Report, incorporated by reference in 401 KAR 42:070.~~

~~1. This shall include the cost of preparing a classification guide.~~

~~2. The cabinet shall also reimburse a one (1) time amount of \$500 for the mobilization and demobilization of equipment.~~

~~(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix table cost for each pit, in addition to the costs allowed in subsection (3) of this section.~~

~~(2) The following items shall be included in the cost listed in subsection (1)(a) of this section:~~

~~(a) Tank system removal, cleaning, and disposal or closure in place requirements;~~

~~(b) Permanent closure of thirty five (35) feet of associated piping outside of the tank pit;~~

~~(c) Removal of the pump island and canopy;~~

~~(d) Drumming of cleaning material;~~

~~(e) Backfilling to return the excavation to grade less the reimbursable volume of contaminated backfill disposed or treated at a permitted facility and replaced in accordance with subsection (3) of this section;~~

~~(f) Concrete or asphalt surface removal;~~

~~(g) Equipment and material necessary for the permanent closure;~~

~~(h) Preparation of a permit if required for permanent closure or testing of a tank system;~~



1       ~~(i) Excavation and loading of material;~~

2       ~~(j) Collection of samples, including domestic use wells, domestic use springs, and~~  
3 ~~domestic use cisterns within a 100-meter radius of the UST system; and~~

4       ~~(k) Labor charges relating to paragraphs (a) through (j) of this subsection.~~

5       ~~(3) The costs of the following items shall be allowed, if necessary, in addition to the cost~~  
6 ~~established in subsection (1)(a) of this section upon the submittal of a claim in accordance with~~  
7 ~~Section 5 of this administrative regulation:~~

8       ~~(a) Facility restoration. Facility restoration activities shall only be reimbursable under this~~  
9 ~~account if a No Further Action Letter has been issued for the subject facility upon completion of~~  
10 ~~permanent closure activities in accordance with 401 KAR 42:070, without corrective action~~  
11 ~~activities being performed outside of the excavation zone. A cost estimate shall be submitted,~~  
12 ~~through the completion of Section 12 of the SOTRA Reimbursement Worksheet, DEP 0064, and~~  
13 ~~shall be approved by the Underground Storage Tank Branch, in writing, prior to incurring costs.~~  
14 ~~Additional costs related to the repair of subsidence resulting from improper placement of fill~~  
15 ~~material shall not be reimbursable;~~

16       ~~(b) Transportation, disposal, or treatment, and replacement of backfill contaminated above~~  
17 ~~the applicable screening levels established in 401 KAR 42:080;~~

18       ~~(c) Disposal of asphalt surface material;~~

19       ~~(d) Installation of up to four (4) soil borings in accordance with Section 4.4 of the Closure~~  
20 ~~Outline, incorporated by reference in 401 KAR 42:070;~~

21       ~~(e) Transportation and disposal, treatment, or recycling of tank contents or waste;~~

1       ~~(f) Removal, transportation, and disposal or treatment of water from within the excavation~~  
2       ~~zone in accordance with Section 4.1 of the Closure Outline, contaminated above the applicable~~  
3       ~~screening levels established in 401 KAR 42:080;~~

4       ~~(g) Laboratory analysis, as required in accordance with the Closure Outline, incorporated~~  
5       ~~by reference in 401 KAR 42:070, with the exception of laboratory analysis of samples collected~~  
6       ~~in accordance with Section 6 of the Closure Outline; and~~

7       ~~(h) Grain size analysis for facilities accurately classified as Class B in accordance with the~~  
8       ~~Classification Outline, incorporated by reference in 401 KAR 42:080.~~

9       ~~(4) Optional soil removal outside of the excavation zone in accordance with Section 6 of~~  
10       ~~the Closure Outline, incorporated by reference in 401 KAR 42:070 shall be reimbursed in~~  
11       ~~accordance with 401 KAR 42:250.~~

12       ~~(5) Facility restoration for corrective action activities performed outside of the excavation~~  
13       ~~zone shall be reimbursed in accordance with 401 KAR 42:250.]~~

14       Section 5. Claims. (1) Eligible reimbursement for permanent closure costs associated with  
15       a SOTRA Application for Assistance approved prior to January 4, 2019,~~[October 6, 2014]~~ shall be  
16       made in accordance with the administrative regulations in effect at the time the SOTRA  
17       Application for Assistance was approved.

18       (2) To receive reimbursement, an owner shall submit a completed UST Claim Request for  
19       Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250~~[(1)(a) To receive~~  
20       ~~reimbursement, an owner shall submit a completed SOTRA Claim Request, DEP 6068; and~~

21       ~~(b) The owner shall retain a copy of the form for his or her records].~~

(3)[(2)(a)] In addition to the completed claim form, the owner shall submit supporting documentation of actual cost, including invoices, and weigh tickets~~[the required SOTRA Reimbursement Worksheet, DEP-0064]~~.

~~(4)[(b) Documentation of actual cost, including invoices and weigh tickets, shall be attached to the worksheet.]~~

(3)] The UST Branch~~[cabinet]~~ shall review a claim request for~~[the following]~~:

(a) The number and size of tanks removed; and

(b) Verification of eligible costs.

(5)[(4)] To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(6)[(5)] The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(7)[(6)] If a claim is determined to be deficient by the UST~~[Underground Storage Tank]~~ Branch, a written correspondence~~[deficiency letter]~~, outlining the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(8)[(7)] Reimbursement shall be contingent upon a determination by the cabinet that the report required has been deemed technically~~[is]~~ complete and meets the requirements of 401 KAR 42:060~~[Chapter 42]~~.

(9)(a)[(8)(a)] An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

(b) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement

1 through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance  
2 with 401 KAR 42:250.

3 ~~(10)~~<sup>(9)</sup> All claims shall be submitted within two (2) years after issuance of a No Further  
4 Action letter by the ~~UST~~<sup>Underground Storage Tank</sup> Branch in accordance with KRS 224.60-  
5 130(1)(n).

6 Section 6. Extensions. (1) The owner~~or operator~~ of a UST system may request an  
7 extension to a deadline established by this administrative regulation or established by the cabinet  
8 in writing pursuant to this administrative regulation.

9 (2) The extension request shall be submitted in writing and received by the  
10 ~~UST~~<sup>Underground Storage Tank</sup> Branch of the Division of Waste Management prior to the  
11 deadline.

12 (3) The cabinet shall grant an extension, if the cabinet determines that an extension would  
13 not have a detrimental impact on human health or the environment.

14 Section 7. Incorporation by Reference. (1) "UST Application for Assistance for SOTRA",  
15 DWM 4293, March 2018~~[The following material]~~, is incorporated by reference[<sup>3</sup>:

16 ~~(a) "SOTRA Application for Assistance", DEP 6067, November 2016;~~

17 ~~(b) "SOTRA Claim Request", DEP 6068, November 2016; and~~

18 ~~(c) "SOTRA Reimbursement Worksheet", DEP 0064, August 2011].~~

19 (2) This material may be inspected, copied, or obtained, subject to applicable copyright  
20 law, at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601,  
21 Monday through Friday, 8:00<sup>[8]</sup> a.m. to 4:30 p.m. This material is also available on the Division  
22 of Waste Management's Web site at <http://waste.ky.gov/ust>.